

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, CA 94105**

File No: REG-2007-00005

May 17, 2007

NOTICE OF PROPOSED REGULATORY ACTION

SUBJECT OF PROPOSED REGULATORY ACTION

Revised Mandated Benefits Analysis Regulation

AUTHORITY AND REFERENCE: The Commissioner proposes to amend Title 10, Chapter 5, Subchapter 2, Article 1.3 of the California Code of Regulations in order to reflect recent amendments to California Health and Safety Code; the subject regulations as originally drafted prescribed specific mechanisms for the calculation, assessment and collection of fees by the Insurance Commissioner from health insurers to fund a study by the University of California of the efficacy of benefits prescribed by legislative mandate. The Insurance Commissioner was required by California Health and Safety Code Sections 127660 – 127762 (in conjunction with the Department of Managed Care) to provide up to two million dollars [\$2,000,000] to fund this study through assessments on health insurers for the Fiscal Years 2002-3, through 2005-6.

In September of 2006 the California Legislature amended the Health & Safety Code to require that the study of mandated legislative benefits be continued through the end of Fiscal Year 2009-2010 and that the Insurance Commissioner continue to assess health insurers to fund the study. Accordingly, the Insurance Commissioner now proposes to amend the regulation so that it is fully consistent with amended California Health and Safety Code Section 127662. These regulations are intended to implement, interpret and make specific that amended provision of the California Health and Safety Code.

HEARING DATE, TIME AND LOCATION:

No public hearing is scheduled for this rulemaking. Pursuant to California Government Code section 11346.8(a) any person (or their authorized representative) may request that such a hearing be held. To request a hearing, submit the request in writing and direct the

request to Debra A. Chaum at the address indicated below. Such request must be made no later than 5:00 p.m. on June 25, 2007.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS:

Debra A. Chaum, Senior Staff Counsel
California Department of Insurance, Legal Division
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4115

Alternate contact person:

George Teekell, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4390

DEADLINE FOR WRITTEN COMMENTS:

All written materials [including e-mail transmissions] must be received by the Insurance Commissioner, addressed to the contact person and address designated above, no later than 5:00 p.m. on July 9, 2007. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:

The Commissioner will accept written comments transmitted by e-mail provided that they are sent to the following e-mail address: chaumd@insurance.ca.gov.

ACCESS TO HEARING ROOMS:

Please contact the contact person designated above.

INFORMATIVE DIGEST:

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

California Health and Safety Code Sections 127760 -2 became effective as law on January 1, 2002. This statutory scheme required the University of California to prepare an analysis and systematic review of health benefits currently mandated by Legislature to determine if legislatively mandating that health insurers provide certain health benefits is in the public interest.

The health benefits to be reviewed were specified at California Health and Safety Code Section 127760 (c) and include such important benefits as bone marrow testing for prospective donors, infertility treatments, hearing aids, and treatment for substance related disorders. California Health and Safety Code Section 1277662 (a) requires that the California Department of Insurance and Department of Managed Care provide up to two million dollars towards the cost of this review by assessing health insurers and health care service plans for the costs of the study. Although the referenced statutes requires the Department of Insurance to fund a portion of the above described study, there is no formula set forth for the computation of each individual health insurer's fee . Additionally, the enabling statutes do not specify any mechanism or procedure for the assessment or collection of the required fee.

The Commissioner has determined that the adoption of this regulation is necessary in order to effectively administer California Health and Safety Code Sections 127762. The amendment to the regulation proposed herein would essentially prescribe the manner in which each health insurer continue to calculate and pay the assessment as originally required by California Health and Safety Code Sections 127662 for the Fiscal Years 2006-7, 2007-8, 2008-9 and 2009-10.

Effect of Proposed Action

The major effects of the regulations are as follows:

Proposed California Code of Regulations section 2218.63(b)

California Health and Safety Code Section 127662(as amended in 2006) require that the Insurance Commissioner assess health insurers to fund a study of legislatively mandated benefits for the Fiscal Years 2006-7 through Fiscal Year 2009-10.

California Code of Regulations Subsection 2218.63 (b) provides that invoices issued pursuant to regulations shall assess a fee calculated from each health insurer for the Fiscal Years 2002-3. , 2003-4; the subsection goes on to provide that separate invoices shall be issued for the Fiscal Years 2004-5 and 2005-6, respectively.

The Commissioner proposes to amend subsection 2218.63(b) so that it is correctly reflects legislative change made to California Insurance Code Section 127662 by requiring the Commissioner to assess health insurers the prescribed statutory assessment for the Fiscal Years 2006-7, 2007-8, 2008-9 and 2009-10.

Additionally, the Commissioner has eliminated the provision of the regulation that requires that separate invoices shall be issued for the Fiscal Years 2004-5 and 2005-6, as the scope of the amended statute is prospective only and does not require both prospective and retroactive accounting methodologies.

The purpose of this subsection is to implement the amended statutory subsection and to clarify and specify that the health insurers are obligated pay the assessment prescribed by the enabling statute through Fiscal Year 2009-10.

MANDATES:

These regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING:

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:

The Commissioner has made an initial determination that the proposed regulations do not have a significant, statewide adverse economic impact directly affecting business or the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES:

The Commissioner has made an initial determination that a representative private person or entity may incur additional expenses as a result of these regulations. A fully detailed analysis of the additional expense contemplated is set forth in the rulemaking file. In summary the Statistical Analysis Division of the Department of Insurance has determined that the cost of the contemplated assessment of health insurers will be eleven cents per covered life for the Fiscal Year 2006-7 and potentially twelve cents per covered life for the Fiscal Years 2007-8, 2008-9 and 2009 -10.

FINDING OF NECESSITY:

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS:

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES:

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS:

The Commissioner has determined that the proposed amendment to the regulations will have no direct impact on small businesses as the entities regulated by these regulations are health insurers and are specifically excluded from the definition of small business as set forth in the California Government Code.

COMPARABLE FEDERAL LAW:

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed adoption of the regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above. The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING:

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS:

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find in the leftmost column the link entitled 'Legal.' Click on it. On the 'Legal' page select the 'Proposed Regulations' link, near the top of the page. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search enter " (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the section number of a code section that the regulations implement. [For instance, "127660 ""], or search by keyword ["revised mandated benefits analysis"]. Then, click on the 'Submit' button to display links to the various filing documents. To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the Mandated Benefits Analysis

Regulations link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE:

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person(s) listed above.

Dated:

Steve Poizner Insurance Commissioner

By

DEBRA A. CHAUM
Senior Staff Counsel